IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
ERIE DIVISION

UNITED STATES OF AMERICA, ex rel.)
DILBAGH SINGH, M.D., PAUL KIRSCH,)
M.D., V. RAO NADELLA, M.D., and)
MARTIN JACOBS, M.D.,)
)
Plaintiffs,)
) Civil Action
vs.) No. 04-186E
)
BRADFORD REGIONAL MEDICAL CENTER,)
V&S MEDICAL ASSOCIATES, LLC,)
PETER VACCARO, M.D., KAMRAN SALEH,)
M.D., and DOES I through XX,)
)
Defendants.)

DEPOSITION OF CORPORATE DESIGNEE OF

BRADFORD REGIONAL MEDICAL CENTER

THURSDAY, JULY 26, 2007

Deposition of CORPORATE DESIGNEE OF BRADFORD REGIONAL MEDICAL CENTER, called as a witness by the Plaintiffs, taken pursuant to Notice of Deposition and the Federal Rules of Civil Procedure, by and before Joy A. Hartman, a Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, at the offices of Horty Springer, 4614 Fifth Avenue, First Floor, Pittsburgh, Pennsylvania, commencing at 10:03 a.m. on the day and date above set forth.

A. That would have been based on the scheduling, the availability of the Axis Camera. We actually had enough demand for two cameras, and so depending on the availability of the Axis Camera and the urgency -- the degree of urgency for the test, we might have done that, done that there.

Q. Was the camera at V&S used on a daily basis?

A. I do not know the answer to that.

Q. Was there a reason why the hospital did not move the camera from the V&S location to the hospital?

A. Yes.

Q. What was the reason?

A. We wanted to replace the Sophie camera, and we were in the process of embarking on cardiology services at the Medical Center, so we were looking for specific capabilities in our second nuclear camera. We were looking for a camera that specifically was strong in doing nuclear cardiology procedures.

The GE camera was an older model with some limited technology, so we opted not to have that camera moved, because we did not feel that it would meet our future needs.

Q. And so you thought it had limitations that

would not meet the needs of the hospital; is that it?
A. It would not meet our future needs.
Q. Now, when you left it at V&S, did that involve having to pay V&S for the space that it occupied?
A. I don't really know the answer to that. The specificity of that, I'm not familiar with.
Q. But as far as the location is concerned, that camera was used by the hospital, but it was never actually moved to the hospital facility?
A. That's correct.
Q. And, eventually, what happened to that camera? Was it turned back to GE -- was the GE camera turned back to GE?
A. When we were leasing the camera from V&S, we let them know that we did not want that to be the camera ultimately, for the reasons I just outlined; and so they replaced that camera with the Philips CardioMD. Then --
Q. Excuse me. Can you go back?
A. Yes.
Q. Who did you tell that you -- who knew that you didn't want that camera?
A. V&S.

Q. V&S knew that you didn't want that camera?

A. Yes.

Q. Okay.

A. We informed them that that would not meet our future needs, because of the older technology and because of its nuclear cardiology limitations.

Q. So that was known at the time?

A. That was known, yes. Well, at which time?

Q. At the time that you entered into the sublease agreement.

A. I'm not sure of the exact date of those discussions with them and the date of the lease agreement.

MR. STONE: I don't have any further questions for this witness.

MR. MULHOLLAND: Okay. I guess you are free to go then.

THE WITNESS: All right.

(Discussion off the record.)

(Testimony of Mr. Washington ended at 12:09 p.m., and testimony of Mr. Leonhardt began at 12:10 p.m. this date.)

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because the referring physician would only have a financial incentive to only use their service as opposed to any real kind of real competition, which would, essentially, mean the cardiologist would be blocked out.

Q. Well, there were other physicians in the community that would refer patients to a cardiology program, right?

A. It is a very small community.

Q. Well, are you saying then that Dr. Saleh and Dr. Vaccaro had a substantial part of the patient population as their clients or patients?

A. Yes.

Q. Is this the reason why the hospital determined that it would have a significant impact on the cardiology program if they were permitted to go forward with their plan to develop an imaging facility?

A. Yes.

Q. Prior to April of 2001, were Dr. Saleh and Dr. Vaccaro, were they referring their nuclear imaging business to the hospital?

A. I know they were referring some of their

of 2003, and you still have this problem?
A. Uh-huh.
Q. And at this point, Dr. Saleh and Dr. Vaccaro are operating their imaging facility; is that right?
A. Yes.
Q. And it is having a negative impact on the hospital, I assume?
A. Yes, we believe so.
Q. I think the previous May, it looks like there was a determination made by the Board of Directors that Dr. Saleh and Dr. Vaccaro were covered persons within the meaning of the policy against competing financial interests?
A. Uh-huh.
Q. This letter refers to what I was talking about a few minutes ago, about a buy-out that Saleh and Vaccaro were proposing. If you look down to the third paragraph, that is where the number 1.8 million is discussed --
A. Right.
Q. -- as a proposal, I guess, coming from them; is that right?
A. That's correct.

Q. If you go down to the next paragraph, that is the flip side, that is the other option, which is that you enforce the policy; is that right?

A. Correct.

Q. So it looks like you are going back between these two alternatives, in other words, to work with Saleh and Vaccaro in some kind of a buy-out or a venture and the other option is to enforce the policy; is that right?

A. Yes.

Q. Now, if you enforce the policy, I assume you have the problem that you might be driving away referrals because if these guys don't have privileges, they may start referring patients to another hospital; is that right?

A. That is among the issues, yes.

Q. Was that a concern to you that if they are off the staff, then they might have other alternatives, and these guys are a pretty big referral source, right?

A. That was among the concerns, yes.

Q. In fact, you were aware at this point that they had -- at least one of them had applied for staff

this equipment that apparently had limited capabilities from V&S?

A. The agreement that we worked out with V&S to sublease that equipment had as a condition of it that we be free to direct them to acquire a different piece of equipment of our choosing with a lease that had to satisfy -- with conditions that had to satisfy us.

Q. Okay.

A. So --

Q. Are you done?

A. Yes.

Q. Well, Mr. Leonhardt, that is a fairly cumbersome way to go out and acquire a piece of equipment, wouldn't you agree?

A. Yes, if that was the only thing that we were trying to accomplish. Obviously, it wasn't the only thing that we were trying to accomplish.

Q. Let's say that, hypothetically, that the hospital determined that they had a need to get a camera.

A. Yes.

Q. You would probably go to the vendor or a lessor of equipment; is that right?

A. In many circumstances, yes.
Q. When you got your Axis camera back in 1999, did you contact an equipment vendor at that time to get that equipment?
A. I'm sure we did.
Q. Now, in 2003, if you were interested in looking at equipment, you would normally go to the equipment vendor, right?
A. Yes. We were all -- yes.
Q. If there were no other part of this, in other words, if there was nothing else to be accomplished?
A. Correct.
Q. I think that is what you said, if that were the only consideration?
A. Yes.
Q. Isn't it true that the real consideration here was how to pay V&S some money in order to get their business; isn't that right?
MR. MULHOLLAND: Objection to the form of the question; but you can answer.
A. No.
Q. Excuse me?
A. No.

Q. Well, what was the real purpose of that agreement?

A. As I have said before, the real purpose of the agreement was to get us into a situation where we had a level field to compete in. We certainly -- we certainly wanted to have the opportunity to compete for V&S' business based on quality, based on the level of service that we could provide to them and their patients.

Q. Well, in order to compete for V&S' business, you entered into an agreement where you would pay them a certain amount a month; isn't that right?

A. We entered into a lease and a non-competition agreement, yes.

Q. What was the amount that you agreed to pay them each month, pursuant to that agreement? You can refer to the document.

A. We agreed to pay them the pass-through cost of the lease for the equipment and a specific amount for the non-compete agreement and the other considerations.

Q. And what was the -- do you -- if you want to refer to the agreement, I would like you to identify

what the number was and how you arrived at the number.
A. The number here is $29,250 per month. This does not split those into the components that I was talking about.
Q. But you said that it was to actually pay for the pass-through cost to the equipment?
A. Correct.
Q. And also to pay for these other issues, I guess, the non-compete?
A. Correct.
Q. Was it paying for anything else?
A. No.
Q. Now, did you evaluate whether the equipment that you were paying for as a pass-through under this agreement was equipment that could be used by the hospital?
A. Yes.
Q. And did you make any kind of evaluation or determination that this was a good value for the rental payments that you were making here?
A. Yes. It was a good usable piece of equipment. It didn't fit into our long-range plans, but it was a good usable piece of equipment.

Q. I guess, aside from not fitting into the long-range plans, if you just take the equipment itself, this is now in April of 2003 --

A. Correct.

Q. -- how old is this piece of equipment at the time that you entered into the sublease agreement?

A. I don't know the answer to that.

Q. They were a couple of years into their lease, right?

A. They would have been at that point almost two years into the lease, yes.

Q. Did you do any kind of evaluation to determine if you went into the marketplace whether you could do better than what you were paying under this agreement?

A. We had our technical director look at the equipment and make sure that it was useful; and, yeah, we had a general feeling about whether that was a competitive lease or not.

Q. Well, I guess, since you already knew that it wouldn't fit into a longer term plan, then it seems to me that there would be pieces of equipment out there that you could lease or buy that would be more suitable to your long-range plan?

A. More suitable to the long-range plan, yes; and that is why we had, as part of the agreement, a requirement that they seek another piece of equipment of our choosing.

Q. But I guess by doing it the way you did it, wasn't that a more expensive way to get that equipment --

A. No.

Q. -- by then having to buy out --

A. No.

Q. Didn't you have to buy out the other lease?

A. Oh, yes. You would have to buy out the other lease.

Q. So if in 2003, you simply wanted to get yourself a second camera, you could probably have at least a second camera or bought a used camera for less money than subleasing this equipment and entering into a subsequent lease with Philips?

MR. MULHOLLAND: Object to the form. He can answer.

A. There is an economic cost to terminating a lease early; and, yes, in demanding that the lease be terminated early, we created that additional cost. We

saw that as good value to us in developing the program that we were trying to develop.

Q. And that is because you were able to, at the same time, get the non-compete? Is that what your rationale was?

A. We were able to put the whole package together, yes.

Q. And when you got the non-compete, you were essentially buying the business from V&S; isn't that right?

MR. MULHOLLAND: Objection to form.

A. No.

Q. Did you expect that you would get the referral business from V&S as a result of this agreement?

A. We hoped that we would.

Q. Let me give you another exhibit here, and see if you can identify this document.

(Deposition Exhibit No. 14 was marked for identification.)

A. Yes.

Q. What is this document?

A. This is an independent valuation of the lease and non-compete agreement.

Q. Who is Mr. Day?
A. Mr. Day is an accountant and an attorney who does this kind of work, as well as other work.
Q. Is he related to Stroudwater in any way?
A. No.
Q. So he is another consultant that you had assist you with this --
A. Yes.
Q. -- this problem?
A. Yes.
Q. First of all, I guess, I don't think this report is dated. Do you know when this report was prepared or what time frame?
A. I don't know precisely when without the cover letter that went with it. It was, you know, right before we entered into the agreement.
Q. Was this prepared in connection with entering into the sublease agreement?
A. Yes.
Q. What was the purpose of obtaining this report at that time?
A. We felt very strongly that the agreement that we were entering into was appropriate, that the value

that we were receiving was commensurate with what we were paying, but we did want an independent opinion to that effect.

Q. What was the assignment or the scope that you gave to Mr. Day when you hired him to prepare this report?

A. We gave him a letter of engagement, and I don't remember everything that was in it; but, essentially, it was to evaluate the arrangement and give us an opinion as to whether or not the lease and non-compete were fair market value.

Q. And when you say "fair market value," that would require evaluating the lease arrangement for the equipment?

A. Correct.

Q. But also valuing the other parts of the agreement?

A. Correct.

Q. And, essentially, we are talking about non-compete?

A. Correct.

Q. What you call the non-compete?

A. Correct.

Q. Is that how you arrived at the amount that V&S would pay under the agreement?
A. No. We arrived at that amount through negotiations.
Q. Okay.
A. We had a proposed negotiated and agreed upon amount. We wanted an independent opinion as to whether or not that was fair market value.
Q. You knew what the pass-through cost of the equipment lease was, right?
A. That's right.
Q. So that amount didn't change at all?
A. No.
Q. Now, in the negotiations, explain to me how you arrived at the number for the portion of the agreement that covers the non-compete?
A. Through a long and sometimes arduous negotiation.
Q. What was the value that the hospital placed on the non-compete?
A. I don't know. If you are asking me where we started, I don't remember.
Q. Do you recall what V&S put on it?

A. At a beginning point, no, I don't.
Q. Do you recall how you justified the numbers that you were proposing? What did you base that on?
A. We based that on a series of things. What the venture was costing us, what other alternatives, what impact all the other alternatives might have on us.
Q. So you were looking at numbers that reflected the projected loss of business to the hospital?
A. The cost of additional recruiting, the rebuilding of, you know, primary care practices in the community, how we would have people who lived in that community who depended on those physicians for their care, how we were going to care for them.
Q. How did you put a number on that, on those issues you have just identified?
A. Some of those issues were very difficult to put a number on.
Q. Did you do any evaluation of what this meant to V&S in terms of giving up their new enterprise?
A. I believe they did. We did not, no.
Q. Was there any discussion about that?
A. Certainly, there was.
Q. Do you recall what it was that they thought

that they were going to lose by way of stream of revenues?

A. No, I do not.

Q. I will show you a document we will mark as Exhibit 15.

(Deposition Exhibit No. 15 was marked for identification.)

Q. Mr. Leonhardt, this is a letter that appears to be from the hospital's counsel to Ms. Jodeen Hobbs at the law firm of Miller, Alfano & Raspanti, and you are copied on it. Is this letter familiar to you?

A. Let me finish reading it. It has been a long time.

Q. Oh, sure. Go ahead.

A. Okay.

Q. This letter is dated March 14, 2003; so I guess in reading the letter, it appears that the negotiations for the lease agreement had been going on at least prior to this date?

A. Uh-huh.

Q. I would like you to turn to the second page, if you could, and the second bullet point there talks about a value that is placed on the rental payments

under the sublease, proposed sublease?
A. Right.
Q. Do you see that?
A. Yes, I do.
Q. And "From information provided by Vaccaro and Saleh, we understand that the profit from the nuclear camera services is approximately $240,000 annually." Do you see that?
A. Yes, I do.
Q. Does that refresh your recollection?
A. Yes, it does.
Q. I don't know whether your analysis agrees with their analysis of those same figures; but for the purposes of discussion today, that is, obviously, a number that the hospital put on that venture at that time, $240,000 annually in terms of profit. Okay?
A. Okay.
Q. Now, if you look at the next --
A. It is actually a number that Vaccaro and Saleh put on it, but --
Q. Okay. I'm not sure, but, apparently, for the purposes of discussion, that number was accepted. Then the next sentence says, "By the Medical Center's

subleasing proposal, annual rental payments would total $312,000 with a final profit to V&S of $229,000 annually." Do you see that?

A. Yes.

Q. I am assuming that the difference between 312 and the 229 is the amount of those pass-through payments for the equipment. Is that right?

A. I would assume the same thing.

Q. So it looks like the amount of the payments is very close to what the projected profit was for V&S?

A. Uh-huh.

Q. Is that your understanding of what happened here?

A. It looks like they are about $11,000 less.

Q. Now, if we go back to Exhibit No. 14, the report that was prepared by Mr. Day, he actually does an analysis and tries to put a fair market value on the non-compete; is that right?

A. Yes.

Q. Isn't that the point of this?

A. Yes.

Q. And if you would turn to page 13, he discusses what he calls the competitive business valuation

method. Do you see that?
A. Around the middle of the page, yes.
Q. Sort of there, yes.
A. Okay.
Q. I guess Stroudwater had talked about that, as well, in an exhibit that they prepared. Now, I don't have a copy of the exhibit attached to this report, but if you would go down to the next paragraph, it talks about how the competitive business valuation method is calculated, how the valuation is calculated.
It calls for a two-step process. The first step is to generate an estimated projection of the prospective cash flow from the hospital's provision of nuclear cardiology diagnostic and integrally related services with the covenant not to compete in place. Okay?
A. Okay.
Q. In other words, to analyze the cash flow where there is a covenant not to compete?
A. Uh-huh.
Q. In other words, whatever that value is to the hospital's bottom line by having that agreement, and then the second step is to estimate cash flows without

the covenant in place?

A. Okay.

Q. It seems fairly logical; and then you subtract the difference. Is that right? Is that your understanding of how this works?

A. That would be my understanding.

Q. He goes on to say, "When there is a positive difference between the two cash streams, it is evidence that competition would do economic damage to the hospital and its mission. Thus, the use of a covenant not to compete is warranted."

So, obviously, it makes good economic sense for the hospital to have this in place, because they benefit from it, right?

A. Yes.

Q. Now, the value -- it goes on in the next paragraph and it says, "The valuation analysis, however, is then completed by comparing the present value of the benefits of the non-competition agreement with the present value of the payments required under the non-compete agreement. The generation by this present value process of a positive differential provides two conclusions from the valuation

perspective. The first is that a reasonable amount has been paid. The second is that if there was no compulsion to act and an arm's length negotiation process occurred, the amount paid for the covenant represents its fair market value."

In other words, Mr. Day is relating the value that you are paying here to the benefit that the hospital is receiving from having the covenant not to compete; isn't that right?

A. Yes.

Q. And that is based on the additional business that the hospital has; isn't that right?

MR. MULHOLLAND: Objection. Assumes facts not in the record. You can answer.

A. It is based on the opportunity for that additional business, yes.

Q. The expectation?

A. The hope.

Q. Well --

A. The hope.

Q. Well, according to this, the projection of the prospective cash flow?

A. Yes.

Q. In fact, if you go to page 17, I think there is actually an application of this in the table at the bottom; isn't that correct?

A. I'm sorry. An application of what?

Q. An application of what he just explained in terms of the projected revenues, and then he shows the cost of the covenant each year, and then net benefit from the covenant each year going out for a period of five years?

A. Correct.

Q. Now, in fact, during this whole process where you were trying to work this out with V&S over a couple of years, the hospital actually prepared a number of studies or evaluations of the impact on the hospital revenues. I think you had some rough notes in your own notes in April of 2001, and I'm going to show you some other documents, and maybe you could identify them for us.

This does not have a date on it; but perhaps you can identify it.

(Deposition Exhibit No. 16 was marked for identification.)

Q. Mr. Leonhardt, do you know what this document

A. I believe Mr. Fisher prepared this.

Q. And he would have been the CFO at that time?

A. Yes.

Q. And can you explain what this analysis shows?

A. It shows that -- and I can't tell you what time period, but I am sure that this is for a year, but which year, I don't know. 750 admissions, 550 of which were Medicare. That would be from Vaccaro and Saleh combined. 9,000 outpatient episode, 75 home health referrals. We attributed 2.7 million in inpatient revenue, and so on.

Q. Is this analysis, as far as you know, consistent with the analysis that was done by Mr. Day and Stroudwater?

A. No. I think that was much more complete.

Q. Okay. But is it consistent?

A. I believe it is consistent, yeah.

Q. Now, if you would turn a couple of pages until you get to 4046, this is a document that says, "Bradford Regional Medical Center, V&S Impact Analysis." Can you tell -- well, it looks like at the bottom it says prepared by Bob Fisher and Bruce Weddell. Is that who prepared this?

proceeded with their planned imaging facility that the -- that you would be unable to develop your cardiology program?

A. Yes.

Q. And I guess my question is: On a general level, have you addressed that in the sense of have you been able to develop a cardiology program?

A. Yes. In fact, we have.

Q. And I think I asked you this question earlier, but I want to make sure we are clear on this, have you been able to develop your Under Arrangements Joint Venture with the medical staff?

A. No.

Q. Is that program currently inactive? In other words, have you abandoned that, or is that still in the works?

A. It is not active at this point.

Q. Okay. I'm going to show you what we will mark as Exhibit 20.

(Deposition Exhibit No. 20 was marked for identification.)

Q. This is a document that is entitled "Equipment Sublease," and this agreement is -- it appears to be

dated -- the signatures are dated 9-22-03. I think on the front page it is dated as of October 1st, 2003.
A. Correct.
Q. How does this agreement relate to the prior agreement which we marked as Deposition Exhibit No. 13?
A. 13 was simply a preliminary agreement.
Q. This is the same subject matter as the earlier one? It is just more comprehensive? Is that it?
A. Yes; and it, in fact, is the one that was executed.
Q. Well, the other one we looked at was executed, as well; is that right?
A. It was signed, yes. I'm sorry.
Q. Are you saying that this is the agreement that is actually in place right now?
A. Yes.
Q. And your signature appears on the signature page?
A. Yes.
Q. If you would look at page 3 of this document -- actually, beginning on page 2, under Section 2, Subsection (d)(i), the agreement shows the breakdown

of the rental payment that is due under the agreement, and we talked about that a little bit earlier.

A. Uh-huh.

Q. Could you identify the different components of the rental agreement from the agreement?

A. It identifies $6,545 for the hard costs of subleasing the equipment. It as a pass-through of the rental and the maintenance fee paid to GE. Then $23,655 per month for all other rights and duties for sublease.

Q. And that is for the first rental period?

A. Yes.

Q. So that would be through September 30th, 2006?

A. Correct.

Q. So have, in fact, those payments been made for that period of time, since we are beyond September 30th, 2006?

A. Beginning October 1st of 2003, yes.

Q. So all the payments were made up through September 30, 2006?

A. That's right.

Q. At the rate of $30,200 per month?

A. Until February of 2004, when the new equipment